

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

RARE BREED TRIGGERS, LLC,

Plaintiff,

v.

MERRICK GARLAND, in his official
capacity as Attorney General of the
United States, *et al.*,

Defendants.

Case No. 3:22-cv-00085-ARS

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR ORAL
ARGUMENT ON PLAINTIFF'S VERIFIED MOTION FOR LEAVE TO CONDUCT
VENUE DISCOVERY AND TO ABATE PROCEEDINGS, OR, IN THE ALTERNATIVE,
MOTION FOR ORAL ARGUMENT ON DEFENDANTS' MOTION TO DISMISS
UNDER RULES 12(b)(1), 12(b)(3), AND 12(b)(6), OR, IN THE ALTERNATIVE,
MOTION TO TRANSFER VENUE**

Plaintiff's motion for oral argument, ECF No. 43,¹ should be denied.² While Defendants defer to the Court's preferences, Defendants respectfully submit that oral argument is not necessary to resolve Plaintiff's motion for venue discovery, ECF No. 28. The motion for venue discovery has been more than fully briefed; the parties have submitted four briefs on the motion, totaling thirty-one pages of argument, over a simple question of discovery. *See* ECF Nos. 28, 31,

¹ Plaintiff's motion for oral argument, which is three pages long, violates Local Rule 7.1(E), which limits such motions to two pages.

² Plaintiff's motion includes several statements characterizing the arguments on the merits of Defendants' motion to dismiss and Plaintiff's motion for venue discovery. Defendants decline to respond to those arguments in response to the motion for oral argument, as they are not relevant to the relief sought in that motion. In doing so, Defendants do not waive any objection or response to Plaintiff's characterizations or arguments. Defendants respectfully refer the Court to the briefing on the motion to dismiss and motion for venue discovery for a complete statement of Defendants' positions.

38, 41. Plaintiff's motion for venue discovery is without merit and should be summarily denied for the reasons set forth in Defendants' response and surreply. *See* ECF Nos. 31, 41.

Defendants respectfully submit that oral argument is likewise not necessary to resolve Defendants' motion to dismiss or, in the alternative, to transfer venue, ECF No. 20. Again, Defendants' motion is more than fully briefed, with the parties' having submitted four substantive briefs. *See* ECF Nos. 21, 30, 33, 42. Defendants do not dispute that some of the issues raised on the merits of the Rule 12(b)(6) motion are novel. However, the Court need not and should not reach any of those novel issues because there are straightforward threshold issues concerning venue, including some arguments that Plaintiff has not refuted at all. *See, e.g.*, ECF No. 21, at 18–19 (arguing in support of transfer to the Middle District of Florida based on that court's previous handling of Plaintiff's claims and the interests of judicial economy). The Court should rule on these threshold issues before holding oral argument on the merits of Plaintiff's claims.

Although Defendants disagree that oral argument on any pending motion is warranted, counsel for Defendants are nevertheless prepared to participate in oral argument if the Court is so inclined. In the event that oral argument is granted, the undersigned counsel respectfully requests permission to appear remotely. The undersigned counsel is based in Washington, D.C., and travel to the District of North Dakota would be a significant burden, particularly where Defendants have argued persuasively that this is not a proper venue for the case and where the motions can be resolved on straightforward threshold grounds.

Dated: October 31, 2022

Respectfully submitted,

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/s/ Michael P. Clendenen

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